



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

August 28, 2003

Warren Wilbur
d/b/a C&W Excavating
19 Giffin Street
Keene, NH 03431

**NOTICE OF DECISION
ADMINISTRATIVE FINE
NO. AF 02-037(WASTE
MANAGEMENT)**

Dear Mr. Wilbur:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 02-037 issued October 17, 2002, the Waste Management Division sought administrative fines totaling \$20,000 against you for alleged violations of RSA 149-M, the state solid waste management statute, arising from work you did on property located at 244 Winch Hill Road, Swanzey, NH ("the Site"). Pursuant to RSA 149-M:16 and based upon my review of the evidence presented at the hearing held on this matter on July 7, 2003, I have concluded that a fine of \$6,000, with \$4,000 suspended, is appropriate as set forth below:

- ▶ A fine in the amount of \$6,000 is imposed against you for transporting 60 cubic yards of solid waste to an unpermitted solid waste facility.
- ▶ Of the \$6,000 imposed, \$4,000 is suspended conditional on you and C & W Excavating not violating any DES-implemented statute or rule for a period of two years from the date of this decision. If you or C&W Excavating violate any DES-implemented statute or rule within two years from the date of this decision, regardless of when the final determination is made that the violation occurred, the \$4,000 fine shall be due and payable.

The \$2,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

The proper management of solid waste benefits the environment and public health of our state. Improper handling of such waste may spread disease, contaminate groundwater, or become a fire hazard. Under RSA 149-M:9, II, it is unlawful to transport solid waste to an unpermitted solid waste facility. The record showed that you transported solid waste to the Site and that the Site is an unpermitted solid waste facility. The question that remained was whether you transported 200 cubic yards of solid waste as alleged by the Waste Management Division. At the hearing, the Division testified that it did not believe that you transported all 200 cubic yards of

waste. However, the record shows that during a site investigation, you told DES staff that you did in fact transport 60 cubic yards of solid waste. Thus, I believe that you are liable for transporting 60 cubic yards of solid waste to an unpermitted solid waste facility. The potential exists that this activity may adversely impact human health and the environment, thus the fine imposed is warranted.

This decision is based on the following findings and conclusions:

1. Cleveland Prince, Jr. and Jodie Prince ("the Princes") own a lot located at 244 Winch Hill Road, Swanzey, NH and more particularly described in the Cheshire County Registry of Deeds at Book 1582, Page 868 and identified on Swanzey Tax Map 65, Lot 1-1 ("the Site").
2. RSA 149-M:9, I requires a person to obtain a permit from the department before operating a solid waste facility.
3. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any [solid waste] facility, other than an approved facility.
4. RSA 149-M:4, IX defines a [solid waste] facility as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste." The Site is a "solid waste facility" as defined by the statute.
5. RSA 149-M:4, XXII defines "solid waste", in part, as "...any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
6. RSA 149-M:4, XXI defines "refuse" in part, as "...any waste product...which is composed of wholly or partly of such materials as ... brick, plaster, or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
7. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes, but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in any manner that conceals or other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.

8. On May 2, 2002, in response to a complaint DES received that solid waste was being dumped at the Site and used as fill, DES visited the Site with Cleveland Prince, Sr. and Warren Wilbur. At the site visit, DES measured 200 cubic yards of solid waste on the Site consisting of demolition debris. DES did not believe that Mr. Wilbur disposed of all 200 cubic yards of the waste.
9. At the site visit, Mr. Wilbur admitted to bringing 60 cubic yards of construction and demolition debris to the Site from a 200 year old house he was razing for its owner, Russell Ball.
10. On June 28, 2002, DES issued Administrative Order No. WMD 02-18 to Mr. Wilbur ordering him to immediately stop transporting and disposing of solid waste at the Site and to remove all solid waste he transported to the Site within 90 days of the Order ("the Order"). Mr. Wilbur failed to comply with the Order.
11. The Site is an unpermitted solid waste facility.
12. The Division sought a fine for transporting solid waste to an unpermitted solid waste facility.
13. The Division has shown that Mr. Wilbur transported solid waste to an unpermitted solid waste facility.
14. The Division alleged that Mr. Wilbur transported 200 cubic yards of solid waste to an unpermitted solid waste facility.
15. The Division admitted that it believed that Mr. Wilbur did not transport all of the 200 cubic yards of solid waste measured.
16. Mr. Wilbur admitted that he transported and disposed of 60 cubic yards of solid waste to an unpermitted solid waste facility.
17. The Division has failed to prove by a preponderance of the evidence that Mr. Wilbur transported 200 cubic yards of solid waste to an unpermitted solid waste facility.
18. The Division has shown that Mr. Wilbur transported 60 cubic yards of solid waste to an unpermitted solid waste facility.
19. Warren Wilbur d/b/a C&W Excavating violated RSA 149-M:9, II by transporting 60 cubic yards of solid waste at an unpermitted solid waste facility.
20. For a violation of RSA 149-M:9, II, Env-C 612.11(b) authorizes a fine of \$2,000 per 20 cubic yards or portion thereof transported or disposed, for a total fine of \$6,000.
21. Warren Wilbur, d/b/a C&W Excavating, violated RSA 149-M:9, II by disposing of solid


waste at an unpermitted solid waste facility. DES has chosen not to seek a fine for this violation.

22. None of the factors identified in Env-C 601.09(c)(1) through(4) apply to reduce the amount of the fine that can be imposed for the violation in # 19 above.

You violated RSA 149-M:9 by transporting 60 cubic yards of solid waste to an unpermitted solid waste facility. Thus, for the reasons discussed above, I have concluded that the fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,


Michael P. Nolin
Commissioner

Enclosure

cc:

Philip J. O'Brien, Ph.D, Director, Waste Management Division
Carl Woodbury, DES/WMD/SIS
Mark Harbaugh, DES Enforcement Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney
Gretchen Rule, DES Legal Unit